

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RAUL ROMERO,

Defendant.

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MEMORANDUM

07-cv-685-bbc

In an order entered on December 12, 2007, I denied defendant Raul Romero's post conviction motion brought pursuant to 28 U.S.C. § 2255. On February 8, 2008, defendant filed a notice of appeal, together with requests for leave to proceed in forma pauperis on appeal and for a certificate of appealability. I denied those requests on February 14, 2008, after concluding that defendant's appeal was not taken in good faith and thus, that defendant had failed to meet the more demanding legal standard for obtaining a certificate of appealability.

Nearly two months later, on April 11, 2008, defendant filed with the Court of Appeals for the Seventh Circuit an affidavit of indigency and a document titled "notice of appeal" in which he states he wishes to appeal from "the final judgment from an order 28

U.S.C. § 2255 denying petitioner's motion to vacate entered in this action on the 15 day of February 2008." The court of appeals has forwarded these documents to this court with a letter asking that the notice be docketed as of the date it was received in the court of appeals "pursuant to Fed. R. App. P. 4(d)."

When a district court has denied a defendant's requests for leave to proceed in forma pauperis on appeal following the entry of judgment denying a § 2255 motion, a defendant is free to file directly with the court of appeals a motion to proceed in forma pauperis on appeal. Fed. R. App. P. 24(a)(5). This motion is to be filed within thirty days after service of the district court's order denying the defendant's request, together with a copy of the "district court's statement of reasons for its action" and "the affidavit prescribed by Rule 24(a)(1)." If a district court denies a defendant's request for a certificate of appealability, the defendant is free to file a request for issuance of a certificate directly with the court of appeals. Fed. R. App. P. 22(b)(2).

It is understandable that the court of appeals did not view defendant's April 11, 2008 "notice of appeal" as intended for its review under Fed. R. App. P. 24(a)(5) and 22(b)(2), because the Rule 24 motion is late and not accompanied by the materials the rule directs a litigant to provide. Nevertheless, upon closer review, it appears clear from defendant's statement that he is challenging this court's February 15 decision and asking the court of appeals to allow him to proceed in forma pauperis and issue him a certificate of

appealability, in light of the fact that this court has denied his requests. Therefore, I am returning the documents to the court of appeals for whatever action it wishes to take.

Entered this 22<sup>nd</sup> day of April, 2008.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge